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BEFORE THE ARIZONA CORPORATION COMMISSION

JEFF HATCH-MILLER  
Chairman  
MARC SPITZER  
Commissioner  
WILLIAM MUNDELL  
Commissioner  
MIKE GLEASON  
Commissioner  
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Commissioner

Arizona Corporation Commission

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IN THE MATTER OF QWEST  
CORPORATION'S PERFORMANCE  
ASSURANCE PLAN

DOCKET NO. T-01051B-03-0859

QWEST CORPORATION'S  
REPLY BRIEF

Qwest Corporation ("Qwest") hereby submits its reply brief on the single remaining issue in Arizona's First Six-Month Review of the Qwest Performance Assurance Plan ("QPAP"). The remaining issue is whether the Long Term PID Administration ("LTPA"), a voluntary forum, should be reinstituted and Qwest ordered to participate, or whether existing forums continue to be sufficient.

Introduction

On Friday, April 28, 2005, parties to the Arizona First Six-Month QPAP Review were to file initial briefs on the LTPA issue.<sup>1</sup> The Arizona Corporation Commission Staff ("ACC Staff" or "Staff") and Qwest filed briefs on this date. No CLEC filed an initial brief. Accordingly, this reply brief only addresses Staff's initial brief.

<sup>1</sup> See Procedural Order, Docket No. T-01051B-03-0859, dated April 8, 2005.

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1                   Qwest's PID Management Process demonstrates that commitment.

2  
3           Staff criticizes Qwest for withdrawing from LTPA, characterizing the withdrawal as  
4 "unilateral," and believes that Qwest's departure was prohibited because withdrawal constitutes a  
5 fundamental change, which requires Commission and CLEC agreement.<sup>2</sup> Rather than citing any  
6 authority, Staff seems to rely on its flawed subjective interpretation of outdated processes, its  
7 mistaken belief that the OSS 271 TAG and LTPA had "strict governance rules," and its  
8 erroneous assumption that LTPA is important to ensure post 271 compliance. None of the three  
9 hypotheses upon which Staff relies establish that Qwest was precluded from withdrawing its  
10 support of LTPA.

11           The TAG, described more fully below, was a creature of the Arizona 271 Operational  
12 Support Systems ("OSS") Test that established Qwest had met its non-discriminatory obligations  
13 under Section 271 of the Telecommunications Act of 1996.<sup>3</sup> It is arguable whether the TAG  
14 operated according to strict governance rules, but whether it did or did not, participation in the  
15 TAG does not affect and is irrelevant as to whether Qwest was acting within its management  
16 authority by withdrawing from LTPA. The OSS Test was completed, and the TAG is no longer  
17 in existence. It had no life separate from the OSS Test. Additionally, nothing in the Governance  
18 Document for LTPA<sup>4</sup> supports Staff's assertion that Qwest could not withdraw from LTPA.  
19 Staff's assertion apparently proceeds from the assumption that finds no support whatsoever in  
20 the LTPA Governance Document--that LTPA was voluntary for all parties, except Qwest.--.  
21 Finally, the process that is critical to post-271 compliance is not, and cannot be, a voluntary  
22 forum, like LTPA. Rather, the QPAP is the process that is critical to post 271 compliance. The  
23 QPAP is the only operative compliance process approved by the Commission. The QPAP,

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25           <sup>2</sup>       *Brief of Commission Staff*, Docket No. T-01051B-03-0859, filed 4/28/04 at p. 3, lines 10-13.

26           <sup>3</sup>       Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amended the  
              Communications Act of 1934, 47 U.S.C. § 151 *et seq.*

<sup>4</sup>       Revised Long Term PID Administration Governance, dated May 15, 2003.

1 which has as its express purpose the prevention of backsliding in Qwest's nondiscriminatory  
2 performance, operates to assure compliance, without reference to extraneous processes. The  
3 QPAP is fully adequate and self sufficient, and is the sole process by which the Commission  
4 exercises the authority to approve or reject changes to the Arizona QPAP performance  
5 measurements.

6 Furthermore, there is no authority in the Arizona QPAP to support Staff's statement that  
7 withdrawal from the LTPA process was a "fundamental change" that required the agreement of  
8 the Commission and CLECs. The QPAP says nothing about the LTPA process.

9 Qwest ended its participation in LTPA because LTPA was irreparably broken. It was a  
10 politicized process that frequently lost sight of business needs, lacked procedural rigor, routinely  
11 attempted to address issues in the absence of factual evidence, and in the end, could only result  
12 in advisory-type recommendations, not binding decisions.

13 Qwest's withdrawal was "unilateral" only in the sense that each entity must decide for  
14 itself whether or not to participate in LTPA, a voluntary forum. Qwest faced the decision  
15 whether or not to continue with LTPA, exactly like the hundreds of CLECs in Qwest's 14-state  
16 territory faced the decision whether or not to initially participate in LTPA. The vast majority of  
17 CLECs evinced no interest in LTPA and did not participate in any way. Out of more than 700  
18 CLECs operating in Qwest's 14-state region,<sup>5</sup> only five CLECs consistently participated in  
19 LTPA. Similarly, the ACC Staff faced the same decision, whether or not to participate;  
20 ultimately, the ACC Staff only attended two LTPA meetings out of twenty held after December  
21 1, 2003. Each entity, Qwest, CLECs and state staffs, was free to decide whether to participate in  
22 LTPA.

23 The important point, however, is that Qwest did not withdraw from its responsibility or  
24 willingness to address PID and QPAP issues with the CLEC community. The fact that Qwest  
25 published an alternative PID Management Process on August 6, 2004, demonstrates Qwest's

26 <sup>5</sup> There are currently 718 CLECs that operate in Qwest's 14-state region.

1 commitment to ongoing PID and QPAP management. Qwest implemented this process to all  
2 CLECs because the experience with LTPA strongly demonstrated that a voluntary forum  
3 addressing performance measurement issues must be in a more neutral, commercial  
4 environment. Qwest's process provides such an environment and makes a forced re-entry into  
5 LTPA unwarranted.

- 6  
7 2. All substantive PID or PAP issues were resolved expeditiously in  
8 Arizona's first six-month review; therefore, addressing issues on a state-  
9 by-state basis is a proven reasonable approach.

10  
11 In the First Six-Month Review, the parties addressed a large number of substantive issues  
12 and entered into a Stipulation.<sup>6</sup> This avoided the need for a hearing on any substantive  
13 performance measurement issue. The Stipulation was a region-wide agreement, and therefore,  
14 resolved specific PAP issues, not only in Arizona, but in all of Qwest's states in its local-service  
15 region. Currently, there is no outstanding substantive issue in Arizona. In fact, there is only one  
16 outstanding issue: the procedural question of LTPA. This issue has elicited little interest, as  
17 evidenced by the lack of the parties' participation. Neither the CLECs nor Staff filed a revised  
18 process as envisioned by the Procedural Order.<sup>7</sup> Staff did not file responsive testimony. Only  
19 one party, Covad, filed responsive testimony, but did not file an initial brief.<sup>8</sup> In fact, no CLEC  
20 filed an initial brief. This demonstrated lack of interest in the LTPA issue underscores that there  
21 is no exigency or any pressing reason that justifies Staff's recommendation to reconvene LTPA  
22 by force of order.

23 The Arizona QPAP Review proved to be an effective mechanism to resolve PID and  
24 QPAP issues for all states in Qwest's 14-state local service region. Similarly, the Second Six-

25 <sup>6</sup> *Stipulation of the Parties*, Docket No. T-01051B-03-0859, filed 11/01/2004.

26 <sup>7</sup> *See* Procedural Order, Docket No. T-01051B-03-0859, dated November 15, 2004.

<sup>8</sup> *Supra* note 2.

1 Month Review in the state of Washington is another demonstration of the effectiveness of QPAP  
2 reviews in managing performance measurement issues. The parties in Washington, like Arizona,  
3 addressed a large number of substantive issues and reached a stipulated agreement that was given  
4 region-wide application.<sup>9</sup> These stipulations, having addressed and resolved a significant  
5 number of PID and QPAP issues for all of Qwest's 14-states, are two conclusive examples that  
6 six-month QPAP reviews are effective mechanisms to address PID and QPAP issues.  
7 Consequently, in the present circumstances, there is simply no urgency that warrants Staff's  
8 alternative recommendations. The continuation of addressing performance measurement issues  
9 in six-month reviews is a reasonable and effective approach.

10 This approach, not LTPA, is the approach explicitly provided for by the QPAP, and  
11 actual practice shows it works well. The Arizona QPAP neither references nor endorses LTPA  
12 or any other alternative forum. In a straight-forward manner in Section 16, the QPAP provides  
13 for the management of performance measurements issues within the confines of six-month  
14 reviews or when the Commission deems changes necessary after notice and hearing.<sup>10</sup> It is  
15 sufficient for the Commission to rely upon the codification of six-month reviews in the QPAP  
16 and their proven sufficiency by actual practice. The Commission should reject Staff's  
17 recommendation.

18  
19 3. Staff mischaracterizes LTPA and mistakenly concludes that Qwest should

20  
21 <sup>9</sup> *Washington Stipulation of the Parties*, Docket No. T-01051B-03-0859, filed with the ACC 09/15/2004.

22 <sup>10</sup> Section 16.1 of the Arizona QPAP reads: Every six (6) months, Qwest, CLECs, and the Commission shall  
23 review the performance measurements to determine whether measurements should be added, deleted, or modified;  
24 whether the applicable benchmark standards should be modified or replaced by parity standards; and whether to  
25 move a classification of a measure to High, Medium, or Low or Tier-1 to Tier-2. Criteria for review of performance  
26 measurements, other than for possible reclassification, shall be whether there exists an omission or failure to capture  
intended performance, and whether there is duplication of another measurement. The first six-month period will  
begin upon the FCC's approval of Qwest's 271 Application for the State of Arizona. Staff shall seek the mutual  
consent of the parties to any proposed changes. Notwithstanding the limitations set forth above, Qwest  
acknowledges that the Commission reserves the right to modify the PAP including, but not limited to performance  
measurements, penalty amounts, escalation factors, audit procedures and reevaluation of confidence levels, at any  
time as it sees fit and deems necessary upon Commission Order after notice and hearing

1           be ordered to redefine LTPA with CLECs or that the TAG should be  
2           revived to manage PIDs and the QPAP in Arizona.

3  
4           A.     *Staff appears to acknowledge that LTPA is voluntary and should remain*  
5                 *regional in scope; however, at the same time, Staff recommends that*  
6                 *Qwest be ordered to redefine LTPA and reach agreement with the CLECs*  
7                 *on changes to the governance rules. Staff's recommendations are*  
8                 *inconsistent and unwarranted.*

9  
10           Qwest and the CLECs agree that LTPA was a voluntary collaborative that addressed  
11 performance measurements issues.<sup>11</sup> Nowhere in Staff's brief is there an indication that Staff  
12 disagrees LTPA is voluntary, or a statement that CLECs should be precluded from raising an  
13 issue in a six-month review without first taking the issue to LTPA. On the one hand, it appears  
14 that Staff acknowledges the voluntary nature of LTPA, as evidenced by Staff's first  
15 recommendation that the ACC resurrect the TAG, if Qwest declined to participate in a  
16 redefinition of LTPA II with the CLECs. On the other hand, Staff recommends that the  
17 Commission order Qwest to work with CLECs to restructure the rules by which an LTPA II  
18 would operate. Staff goes so far as to say, "Thus, the Commission should require CLEC input  
19 into any new process for LTPA II and should *require agreement* between Qwest and the CLEC  
20 Community on the process for LTPA II."<sup>12</sup> (Emphasis added) In other words, Staff apparently  
21 believes that LTPA is a voluntary forum for all except Qwest and that agreement between Qwest  
22 and the CLECs can be coerced. Ordering participation in a voluntary forum and agreement  
23 between the parties is a pointless act. Staff's arguments are contradictory and should be rejected.

24           Elsewhere in its brief, Staff recommends that if Qwest and the CLECs cannot reach

25           <sup>11</sup>     See Qwest's Direct Testimony, filed on January 21, 2005 at p. 10. and Rebuttal Testimony, filed on March  
26           25, 2005 at p. 8. See also, CLECs' Comments, filed on December 10, 2004 at p. 2.

<sup>12</sup>     Brief of Commission Staff, Docket No. T-01051B-03-0859, filed April 28, 2005 at p. 5, lines 7-9.

1 agreement on changes to the LTPA II process, that the ACC should decide the disputed issues.  
2 Staff does not state whether LTPA II should be an Arizona-specific forum or a regional  
3 collaborative as it was originally. However, if Staff is in favor of keeping LTPA as a regional  
4 collaborative, it does not make sense that Staff recommends the ACC resolve disputed issues  
5 regarding LTPA II's governing principles because LTPA is not specific to Arizona, but rather  
6 applicable to all fourteen states. On the other hand, if Staff is proposing only an Arizona-specific  
7 LTPA, it would constitute nothing more than a six-month review. Staff's recommendations are  
8 unsound.

9

10       *B. LTPA is not necessary to ensure that PIDs remain meaningful and*  
11       *updated so that wholesale performance is effectively measured. Six-month*  
12       *QPAP reviews or Qwest's PID Management Process perform that*  
13       *function.*

14

15       Staff asserts that LTPA was adopted to ensure PIDs remain meaningful and current so  
16 that the wholesale performance Qwest provides to CLECs can be measured effectively.<sup>13</sup>  
17 However, as noted above, this purpose was never articulated in the QPAP; rather, six-month  
18 reviews were established for that purpose. In any event, LTPA is not necessary to accomplish  
19 that goal as demonstrated by two recent examples. As stated above, CLECs and Qwest entered  
20 into two QPAP stipulations, Arizona and Washington, in the last six months of 2004. Those  
21 stipulations updated a large number of PIDs and applied a large number of new performance  
22 standards. Qwest and CLECs voluntarily entered into the two stipulations after LTPA had  
23 concluded. From these recent QPAP examples, two things are clear: (1) LTPA is not necessary  
24 to keep PIDs meaningful and up-to-date, and (2) QPAP reviews are effective mechanisms to  
25 update PIDs and the QPAP.

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<sup>13</sup> *Id.* at p 2, lines 1-2.



1       Notwithstanding that six-month reviews are themselves sufficient even without  
2 alternative PID forums, LTPA is not necessary because Qwest's process provides a more  
3 productive process than LTPA did. Specifically, Qwest's process provides for a full discussion  
4 of the issues on the merits and builds a factual record, as discussed in more detail directly below.  
5 Agreements are to be taken to the state commissions to be given effect and to keep the PIDs and  
6 QPAP up-to-date. Then, to Staff's point, the requirement that Qwest's wholesale performance  
7 be measured effectively will be met.

8       Even more importantly, not only is LTPA unnecessary for the reasons provided above,  
9 but ordering LTPA is contrary to the QPAP itself. Staff's request that the ACC order Qwest to  
10 return to LTPA is without a basis in the QPAP, and constitutes a *de facto* additional QPAP  
11 requirement.

12  
13       C.     *LTPA failed to build a full record of the issues and did not produce*  
14               *binding decisions.*

15  
16       Staff states that LTPA operated according to strict governance rules, completely aired  
17 issues, built a full record of the issues, and resulted in well-defined positions of the parties.<sup>14</sup>  
18 This is inaccurate. First, there were few, if any, real, procedural safeguards. CLECs were  
19 permitted to make allegations and conclusory statements with no factual evidence to support  
20 them. Qwest routinely asked for data so that the allegations could be researched in a systematic  
21 and meaningful way. CLECs rarely provided data. Even requests for production of data by the  
22 LTPA facilitator were sometimes unanswered by CLECs.<sup>15</sup>

23       Several issues went to the impasse process after many months of negotiations. Even after  
24 many discussions among the parties, the definition of the impasse issues underwent multiple

25       <sup>14</sup>     *Id.* at p. 3, lines 10-13 and p. 5, lines 14-16.

26       <sup>15</sup>     The LTPA Facilitator requested that CLECs produce their results of the line loss study period so that it  
could be compared to Qwest's results, which the CLECs were disputing. Only one CLEC produced data.

1 modifications by the parties attempting to clearly define what was at impasse. Qwest submitted  
2 changes to seven out of eight impasses issues definitions,<sup>16</sup> many of which were also modified by  
3 the CLECs, sometimes in conflicting ways. There was a lack of clarity of the issues entering the  
4 impasse process for both Qwest and the CLECs. Even during the impasse process, CLECs  
5 raised new issues to which Qwest was obligated to respond almost spontaneously. For example,  
6 CLECs unilaterally supplemented their impasse position on the BI-5 issue (billing claims  
7 processing) with information that came from a Change Management Meeting ("CMP") a few  
8 days before they provided their supplement.

9       After months of negotiations and weeks of following the impasse process, there was no  
10 binding decision. For each impasse issue, there was only a vote by a subset of the state  
11 commission staffs adopting the facilitator's recommendation. Neither the facilitator nor the  
12 commission staffs had authority to issue a binding decision; consequently, impasse issues had to  
13 be re-litigated before those state commissions where CLECs raised them. LTPA was not an  
14 efficient or effective forum, and by its governing rules did not finally dispose of any impasse  
15 issue.

16       The current PID Management process provides a better opportunity to thoroughly air  
17 issues and build a complete record. First, it allows parties to focus principally on business needs,  
18 real problems and mutually-agreeable solutions based on data: one carrier to another.  
19 Commercial discussions between CLECs and Qwest are by their nature more focused on  
20 business needs. It is Qwest's experience that parties are (1) more forthright in a commercial  
21 setting as they focus more on business interests, and (2) are less guarded since the discussions  
22 are solely between CLECs and Qwest. The result is that parties are more apt to explore potential  
23 compromises.

24       The inescapable corollary is that discussions are more guarded when there is regulator  
25

26 <sup>16</sup> Red-line changes were made to the impasse definitions for BI-3, BI-5, line loss, line splitting, loop  
splitting, PO-2 and x-DSL-I.

1 participation. This is especially true in the world of PIDs and QPAPs since disputed items are  
2 typically taken to proceedings in front of state commissions in which state staff representatives  
3 participate in the resolution of the disputes. When only the CLECs and Qwest are in the room,  
4 the parties are able to discuss any particular matter more freely and openly. However, with a  
5 representative of a regulatory body present, the openness of the parties to discuss issues fully,  
6 factually, and frankly, unavoidably declines, adversely affecting the flexibility and tone of the  
7 discussions.

8       Moreover, in the context that commissions are involved in approving PID/QPAP-related  
9 filings, when state staff members attend compromise negotiations, those staff members obtain  
10 knowledge of the offers to compromise that were offered, but which failed. The fact that parties  
11 are aware that state staffs have knowledge of failed negotiations and may participate in their  
12 resolution if taken to a State Commission also tends to have a cooling effect on the parties'  
13 discussions. These factors add a layer of complexity that is not necessary.

14       Since the current process is focused on business needs and finding solutions to problems  
15 based on facts and data, this process is better positioned to thoroughly air the issues, build full  
16 and complete factual records, and in that process, define the positions of the parties, whether  
17 those positions are in alignment or in opposition with one another. The process is fully described  
18 and depicted in a flow chart on Qwest's publicly-available website.<sup>17</sup>

19       For these reasons, the status quo that uses the current process is better positioned than  
20 LTPA was to operate by strict governance, fully air the issues, build a complete factual record  
21 and define the parties' positions.

22  
23       *D. Staff's criticism of Qwest's process is not well-founded.*  
24

25       On page 4 of its brief, Staff enumerates four concerns with Qwest's process. Each

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<sup>17</sup>       The URL is: <http://www.qwest.com/wholesale/clecs/reqmodpid.html>.

1 concern has no basis. Staff's first concern is that there is little structure to Qwest's process. To  
2 the contrary, the process is in many ways more structured than LTPA. Qwest's process, posted  
3 on the publicly-available website, informs CLECs to contact their service manager with  
4 performance measurement issues, provides a step-by-step description of the tasks involved,  
5 identifies the party, Qwest or CLEC, who performs the task, links to more detailed information  
6 on service management and SGATs, provides frequently asked questions and a two-page process  
7 diagram, schematically portraying the process for easy reference. From this information, CLECs  
8 know whom to contact, what to expect and what to do, because much of this process is the same  
9 as they use (and have used for many years) for their operational interactions with Qwest. As  
10 such, it is already scaled to address any number of issues in an efficient manner from as many  
11 CLECs who wish to be involved (i.e., without their having to devote regulatory resources).

12         Second, Staff criticizes Qwest's process because there are no timeframes.<sup>18</sup> One of the  
13 benefits of Qwest's process is that it is flexible. For example, the number and length of meetings  
14 are defined according to the number of issues to be discussed, their complexity and the schedules  
15 of the participating parties. Staff states that Qwest's process could theoretically take up to three  
16 years or longer.<sup>19</sup> Qwest does not know on what basis Staff makes its conclusory statement. It  
17 certainly is not the case that that timeframe would be the result of the process' design; on the  
18 contrary, the process is intentionally designed to respond to issues in a timely manner based on  
19 the nature and complexity of the issues. It is hard to imagine it would take three years to address  
20 an issue; however, if this were ever the case, it would be due to the issue itself or some other  
21 reason, but certainly not due to an inherent flaw in the design of the process. On the other hand,

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23 <sup>18</sup> To give this issue context, Qwest notes that the LTPA Governance document states in the first paragraph:  
24 "This document does not give specific deadlines. Instead, it is anticipated that the Facilitator will set the deadlines  
25 based on the specifics of the impasse issue, such that the impasse issue is resolved within 10 business days as  
26 described below." See Revised Long Term PID Administration Governance, dated May 15, 2003. LTPA did not  
operate strictly by predefined timeframes, other than this 10 day timeframe in the impasse process. Other  
timeframes were either set as they were needed (typically on the weekly calls) or adjusted on an as needed basis  
(extension of the six-month timeframe in order to complete the impasse process.)

<sup>19</sup> *Brief of Commission Staff*, Docket No. T-01051B-03-0859, filed 4/28/04 at p 4, lines 21-22.

1 LTPA often did take many months, whereas agreements have been reached outside of LTPA in  
2 no more than a few weeks.

3 Perhaps more importantly, time sensitive issues can be raised at any time, which is an  
4 improvement over LTPA, where issues were raised and discussed according to a fixed schedule  
5 within six-month intervals. Having said this, Qwest responded to this concern in its rebuttal  
6 testimony. In that testimony in response to Covad, Qwest stated that it was amenable, and Qwest  
7 remains amenable, to add timeframes to the various process tasks. Qwest stated that it would be  
8 better if timeframes were assigned after gaining experience with the process so that they were  
9 based on actual practice.

10 Third, Staff believes that the process is not transparent.<sup>20</sup> As stated above, Qwest's  
11 process is publicly-available for any entity to access. In the execution of the process, Qwest and  
12 any willing certified CLEC in Qwest's 14-state region can discuss issues with all the pertinent  
13 facts and figures, each entity able to negotiate openly and freely. Once agreements are reached  
14 or issues remain in dispute, those agreements and disputes will be posted on Qwest's website,  
15 which is the point at which the process goes from transparency for the willing participants to  
16 openness for any other entity that wishes to be kept abreast of the parties' progress on resolving  
17 issues. In either case, whether agreement is reached or disputes remain, the Commissions retain  
18 their traditional authority to approve the parties' agreements or decide disputed issues in their  
19 role as final arbiter. Qwest's process is both transparent and open as it progresses from the  
20 initiation of an issue to final disposition.

21 Additionally, Staff states that results reached in Qwest's process would have little, if any,  
22 credibility.<sup>21</sup> And yet, exactly the opposite has been proven, as parties have reached and  
23 obtained commission approvals for a number of agreements without LTPA. If CLECs raise an  
24 issue in Qwest's process, it will be defined, researched, discussed and documented. Each  
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<sup>20</sup> *Id.*, line 22.

<sup>21</sup> *Id.*, lines 22-23.

1 participant, CLEC and Qwest alike, is free to present evidence, take positions and offer potential  
2 solutions. If agreement is reached, it is because both sides have found a mutually-satisfactory  
3 solution to a problem, or have decided to adjust their position in order to find an agreeable  
4 compromise. There is no more credible situation than carriers negotiating, coming to an  
5 agreement and filing that agreement with the Commission for approval. Because *all* PID/QPAP  
6 agreements will be filed with the Commission to be given effect, there is yet another opportunity  
7 to understand the bases of those agreements within the procedural safeguards of the formalized  
8 QPAP docket. Likewise, if Qwest and CLECs cannot reach agreement (i.e. the issue remains a  
9 disputed item), the issue would have gone through the same exhaustive process as those issues  
10 where agreement was reached: issue identification, exploration, discussion and final resolution.  
11 As with agreements, disputes are documented and posted publicly. If any party wishes to take  
12 the dispute to the Commission, the fully developed record as well as any additional evidence, if  
13 any, can be presented to the Commission for resolution. Staff's concerns regarding credibility  
14 strains credulity.

15 Last, Staff believes that Qwest can exert too much control over the process.<sup>22</sup> This is not  
16 the case. Qwest's process calls for a region-wide notice to be sent to all certified CLECs, over  
17 700 in total at the present time. According to the process, all 700-plus CLECs can participate  
18 should they wish to and take a position in alignment with or in opposition to Qwest's. Each  
19 party, Qwest and CLECs, are free to submit factual evidence to substantiate their position and  
20 negotiate based on their own needs and business interests. Qwest and CLECs are similarly  
21 situated, and the plain fact is that there is no greater leveler than factual evidence that openly and  
22 incontrovertibly identifies the problem and necessary solution. If anything, the process gives the  
23 parties more control of their own destinies by allowing them to attempt to settle issues prior to  
24 resorting to commissions. Both Qwest and CLECs have equal opportunities to provide evidence,  
25 facts being the dominion of neither party.

26 <sup>22</sup> *Id.*, line 24.

Staff goes on to state that Qwest is not a neutral party and is not motivated to move quickly on the issues or provide full and complete information because the stakes are large; therefore, the process and its outcomes are compromised.<sup>23</sup> Staff gives too little weight to the exigencies of a post-271 environment. Staff states that the purpose of the QPAP is to prevent backsliding.<sup>24</sup> Qwest agrees. If a CLEC or a group of CLECs raise an issue in Qwest's process that demonstrates backsliding, an endemic problem or potential discriminatory performance, Qwest is keenly motivated to address and resolve the issue for at least two major reasons. First, CLECs are Qwest's wholesale customers that are an important part of Qwest's wholesale business plan. Qwest strives on a continual basis to identify problems in the provision of its service to CLECs and to resolve them as expeditiously and efficiently as possible. This only makes good business sense. Second, Qwest strives to resolve problems because of the QPAP liabilities associated with its self-effectuating payment mechanisms. Qwest is also motivated to resolve problems quickly in order to minimize QPAP liability. Finally, there are occasions in which Qwest is interested in pursuing a matter that requires CLEC cooperation to realize.

Additionally, as described above, any party can take a disputed issue to a commission, which retains its final arbiter authority. Since all parties retain the right to have disputes resolved before state commissions, it would serve little purpose for any party, Qwest or CLECs, to attempt to control negotiations.

4. The TAG cannot be revived in its original incarnation and reviving a modified TAG is not warranted or relevant to current circumstances.

The TAG was a unique product of the 271 OSS Test that verified Qwest's performance provided to CLECs was non-discriminatory. The Master Test Plan defined the TAG:

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<sup>23</sup> *Id.*, lines 25-28.

<sup>24</sup> *Id.*, at p. 3, lines 14-15.

1            “[A] Test Advisory Group (TAG), consisting of the ACC, its  
2            consultant, the Test Administrator, the Pseudo-CLEC, Qwest and  
3            those CLECs and other participants who desire to participate has  
4            been established. Its purpose is to act as a communications  
5            mechanism to advise all parties of test results, exceptions, and  
6            corrective action and to provide CLEC feedback on the testing.”<sup>25</sup>

7            (Emphasis added)

8  
9            As demonstrated by the above quote, the TAG was a creature of the OSS test and was not  
10          defined to have a purpose separate from the test or beyond its conclusion; accordingly, the TAG  
11          was disbanded. (Furthermore, Staff’s consultant, test administrator, and pseudo-CLEC are no  
12          longer under contract or performing any functions whatsoever related to their functions during  
13          the test because their role and test functions were limited to the duration of the test, which was  
14          concluded long ago.) The Final Test Report was filed on March 30, 2002<sup>26</sup> and the workshop on  
15          the Final OSS Test Report was concluded April 17-18, 2002.

16          There is no valid reason for the consultant, test administrator and pseudo-CLEC to return  
17          to duty because there is no test underway for which they could assume their former roles.  
18          Equally important, there is no need for these parties to participate in the ongoing administration  
19          of PIDs and the QPAP. Recent history of six-month reviews and the description of Qwest’s

20  
21          <sup>25</sup>          *Master Plan for Testing Qwest’s Operations Support System in Arizona*, Version 4.2, dated June 29, 2001,  
22          at pp. 6 and 7. The consultant of the ACC was DCI whose main functions were to establish the test governing  
23          documents with input from test participants, provide ongoing counsel, maintain communications among the parties,  
24          manage the flow of information, and assist the ACC in overseeing test execution, test results and recommendations.  
25          The test administrator was Cap Gemini Ernst & Young whose main functions were to execute the test, track action  
26          items, provide day-to-day supervision, analyze test results, submit findings, provide technical advice and maintain  
27          blindness and openness according to test governance rules. The Pseudo-CLEC was Hewlett-Packard whose main  
28          responsibilities were to build necessary interfaces, evaluate Qwest’s interface documentation, submit test  
29          transactions, and provide test results to the test administrator. See *Master Plan for Testing Qwest’s Operations*  
30          *Support System in Arizona*, Version 4.2, dated June 29, 2001, at pp. 59-61.

31          <sup>26</sup>          The report was updated and identified as *Final Report of the Qwest OSS Test*, Version 3.0, dated May 2,  
32          2002.



1 process provided above demonstrate that there is no need for entities other than CLECs, Qwest,  
2 and then later after Qwest and the CLECs have had an opportunity to reach agreement,  
3 commissions and staffs to manage PIDs and QPAPs on a going-forward basis. Not only is it not  
4 possible or appropriate to revive the TAG in its original incarnation, but any TAG, even if its  
5 participatory composition were modified, would then be simply duplicative of the six-month  
6 QPAP review.

7 In Arizona's First Six-Month Review, the ACC Staff, CLECs and Qwest identified the  
8 issues to be addressed, negotiated them and resolved all of them but the present issue. If the  
9 TAG were revived without the consultant, test administrator and pseudo-CLEC, who are not  
10 needed in the ongoing administration of PIDs and the QPAP, the remaining participants would  
11 be the ACC Staff, CLECs and Qwest, all the same parties who participated in the First Six-  
12 Month Review. There is simply no need to convene a PID administration forum with the  
13 identical participants who would then participate in their same roles once more in the six-month  
14 reviews. Such duplication does not add value.

### 15 Conclusion

16 Qwest submits that based on the evidence, the Commission should reject Staff's  
17 recommendations that Qwest and the CLECs be ordered to agree on a new LTPA and participate  
18 in it, or in the alternative, that the TAG from the 271 OSS Test be revived to manage PIDs and  
19 the QPAP in Arizona on an ongoing basis. Furthermore Qwest submits that on the evidence the  
20 Commission should find that no modification to the QPAP is necessary, that voluntary processes  
21 should remain strictly voluntary, and the QPAP six-month review process remain unchanged.

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1 DATED this 13th day of May, 2005.

2 QWEST CORPORATION

3  
4  
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